NOTES OF CASES.

Petition for Removal under Federal Employers' Liability Act.—It was held in Calhoun *v.* Central of Georgia R. Co., 67 S. E. 274, that a petition for removal to a Federal court in which the only recital of jurisdictional facts made by the defendant in assertion of a right for removal, as it appears from its petition to remove, is as follows: "That the above-stated case arises under the act of Congress approved April 22, 1908, entitled 'An act relating to the liability of common carriers by railroad to their employees in certain cases,' and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum of $2,000, and that said suit is of a civil nature at law," is sufficient; it appearing from such statements of the petition that the plaintiff's right, if any, is wholly dependent upon an act of congress for its enforcement. This decision is important not only because of the great number of requests for removal that must necessarily arise under the act of congress of 1908, commonly denominated as the Employers' Liability Act, but because it seems to virtually overrule the decision in Miller *v.* Illinois Central R. Co., 168 Federal 982; Nelson *v.* Southern R. Co., 172 Federal 478.

Telephonic Communications in Evidence.—While the authorities are not in accord upon the point whether one who answers a telephone call from the place of business of the person called for, and undertakes to respond as the agent, is presumed to speak for him in respect to matters of the general business carried on by such person at that place, the supreme court of South Carolina in Gilliland *v.* Southern Ry. Co., 67 S. E. 20, holds that the weight of reason and authority is in favor of such presumption. The court in this case, in an able and luminous opinion, discusses the nature and limitations of this presumption. It was said: Those who install telephones in their places of business in connection with a telephone exchange, and use them for business purposes, impliedly invite the business world to use that means of communicating with them with respect to the business there carried on; and the presumption is that they authorize communications made over the telephone in ordinary business transactions. The reason is the same as that for the presumption that a business letter, properly directed, and sent by mail, reaches the business office of the addressee, and is opened by him or his authorized agent. The presumption that the person who answers is authorized to speak may be very slight or strong, according to the circumstances, but the statements of such persons should be admitted in evidence as prima facie the statements of one having authority to speak. It is important to observe that the presumption extends only to communications relating to the usual business carried on at the place from which the telephone communication comes. To illustrate

the rule and the limitation: There is a presumption that a communication purporting to come from a local railroad freight office, relating to loss or injury incurred by owners of freight shipped to the station where the office is located, are made by authorized agents; but there would be no presumption that a telephone communication purporting to come from such a local freight office, relating to the general management of the road, was authorized by the railroad company. It was further said in this case obiter that the identification of the person's voice, responding as agent to a telephone call at another's place of business, is unnecessary to the admissibility of his statements in evidence as prima facie those of one having authority to speak, disapproving Young *v.* Seattle Transfer Co., 33 Wash. 225, 74 Pac. 375, 63 L. R. A. 988, 99 Am. St. Rep. 947; Planters' Cotton Oil Co. *v.* Western Union Telephone Co., 126 Ga. 621, 55 S. E. 495, 6 L. R. A. (N. S.) 1180.

As this interesting question of evidence, of growing importance, has never yet been answered by our supreme court, we have endeavored to keep the decisions down to date so that our readers may have the benefit of them. See article on Telephonic Communications in Evidence, 13 Va. Law Reg. 665. And see 14 Va. Law Reg., pp. 70, 566, 808.

Physical Examination of Plaintiff in Personal Injury Cases.—It was held by the supreme court of South Carolina in Best *v.* Columbia Electric Street Railway & Power Co., 67 S. E. 1, that the court has no power to require a plaintiff suing for personal injuries to submit to a physical examination by the defendant's physicians, or by physicians appointed by the court, for the purpose of ascertaining the true nature and extent of the injury. But there was a strong dissent in this case by Judge Woods in which he cites most of the cases, and severely criticises a similar holding by the supreme court of the United State in Union Pacific R. Co. *v.* Botsford, 141 U. S. 250; and he shows why this decision should not be followed by the state courts. The Chief Justice gave a "grumbling assent" feeling that he was bound by a precedent, but saying that he was prepared to vote to overrule that case. This is a point that has never come up for decision in Virginia, and we hope that our court will depart from their well-known tendency toward the minority ruling, especially on questions of evidence. Nothing can be more helpful to the jury in reaching a just estimate of the damages than a knowledge of the true nature of the injury. To deny to either party any reasonable means of making the extent of the injury evident is unfair, for often its nature is such that the defendant has no means whatever of protecting himself from pretensive or exaggerated claims, except on examination by impartial experts under the order of the court. For